suffrage being, however, emphatically legislative and political in nature, perhaps the court was justified in a large view, in letting the presumptions in favor of legislation control.

CONSTITUTIONAL LAW—INTERSTATE COMMERCE IN OIL PIPE LINES.—Various oil companies—not having the power of eminent domain—owned extensive pipe lines from California to the Atlantic Seaboard. They forced owners of oil to sell to them on their own terms before transportation so that all oil carried was the property of these companies. Congress passed an act (34 STAT. AT L. 584) amending the COMMERCE ACT, by which these Companies were "considered and held to be common carriers within the meaning and purpose of this act." This brought them under the requirements of the COMMERCE ACT. *Held,* the transportation of oil in pipe lines between points in different states is interstate commerce although all the oil transported may belong to the owners of the pipe lines. This is a valid exercise by Congress of its control over interstate commerce and is not a taking without due process of law. But a company which owns its own wells and pipes to another state to its own refinery is not within the act. *U. S. et al.* v. *Ohio Oil Co., et al.,* 34 Sup. Ct. 956.

The fact that the oils carried were owned by the pipe line companies does not of itself prove that the transportation is not commerce. *Rearick* v. *Pennsylvania,* 203 U. S. 507. The companies were masquerading as private business organizations, when in reality they were evading the consequences of becoming common carriers by duress on the oil owners. The statute was aimed at this combination, so the court held that those who are common carriers in substance may be compelled by Congress to become so in form. If the companies are to carry on business "they must do it in a way they do not like or not at all." *Atlantic Coast Line* v. *Riverside Mills,* 219 U. S. 186. Justice MCKENNA vigorously dissented and distinguished this case from other permissable cases of regulation in that in the latter, the uses regulated were always voluntarily extended. In this case the use is compelled and then regulated,—See *W. W. Cargill Co.* v. *Minnesota,* 180 U. S. 452; *Munn* v. *Illinois,* 94 U. S. 113—hence this is a step too far; a taking because of "a subjecting of property to other uses than that of its owner." But conceding this and looking at the ultimate result of the piping operations, the business is not local, it is one of a sufficiently public nature and in which the public has a sufficiently general interest to allow of regulation. These companies handle nearly all of the oil produced in the country, and though the companies were not common carriers nor did they ever hold themselves out to be, still if they wanted to carry on business it had to be done in a way not injurious to the public—on the same principle a private monopoly may be restrained. All regulations of trade with a view to the public interest may more or less impair the value of property and yet not constitute a taking without due process. *Munn* v. *People,* 69 Ill. 80. The decision is probably right though if the companies chose to discontinue operations resulting hardships might inure to oil owners in securing a market. Query,—By the authority of *U. S.*

ex rel Atty.-Gen. v. *D. & H. Co.*, 213 U. S. 366, might not these companies, after having been made common carriers against their will, be denied the right to carry the products of their own wells?

CONSTITUTIONAL LAW—STERILIZATION OF CRIMINAL AS CRUEL AND UNUSUAL PUNISHMENT.—An Iowa statute authorized a surgical operation called vasectomy, to prevent procreation, to be performed on certain classes of defectives and making the operation mandatory as to criminals who have been twice convicted of a felony, is *held* unconstitutional. *Davis* v. *Berry et al.* (D. C. 1914) 216 Fed. 413.

Although it is clear that the court might have rested its decision entirely upon the ground that the particular statute in this case is unconstitutional as depriving one of due process of law, for the reason that it places the determination of a judicial question (whether a criminal has been twice convicted) in the hands of an administrative board at a private hearing, or upon the ground that it amounted to a bill of attainder in not granting a jury trial, yet the court does not confine itself to these reasons, but pronounces the statute invalid as providing for a cruel and unusual punishment, and it is this point which is of chief interest. The supreme court of Washington has held that a similar statute is not invalid on this ground. *State* v. *Feilen*, 70 Wash. 65, 41 L. R. A. (N. S.) 418, 11 MICH. L. REV. 150. The only other case involving a like statute went off upon another point. *Smith* v. *Board of Examiners*, (N. J.) 88 Atl. 96. See 12 MICH. L. REV. 400. In the Washington case the court laid stress on the painless character of the operation of vasectomy, apparently measuring the cruelty of the punishment by the physical pain inflicted. In the instant case the court say, comparing the operations of castration and vasectomy: "But each operation is to destroy the power of procreation. It is, of course, to follow the man during the balance of his life. The physical suffering may not be so great, but that is not the only test of cruel punishment; the humiliation, the degradation, the mental suffering are always present and known by all the public, and will follow him wheresoever he may go. This belongs to the Dark Ages." Generally, punishments have been held cruel and unusual either because they involved the tortures of barbarous times or because they were wholly and manifestly disproportionate to the offense. See *Weems* v. *United States*, 217 U. S. 349, and cases discussed therein. The court in the principal case adopt a somewhat novel ground for holding a punishment cruel or unusual. Obviously, the mere fact that a punishment is humiliating and life-long, is not sufficient, for this may be said of many punishments daily meted out to criminals. Is not the support for this decision to be found in the fact that the mind, without regard to the question of the pain inflicted, the enormity of the offense or the purpose of the operation, instinctively denominates as cruel and unusual a punishment that requires in this manner the mutilation of the human body and the destruction of its natural functions? The novelty of the question in both its legal and pathological aspects justifies this answer, though it may find, because of its novelty, little support in mere precedent.